

within 6 months from the date of the advance if no maturity is stated. Payments due from Federal, State or other governmental units may, in the Reserve Bank's discretion, be regarded as "other assured revenues"; but neither the proceeds of a prospective issue of securities nor future tolls, rents or similar collections for the voluntary use of government property for non-governmental purposes will normally be so regarded. Obligations with original maturities exceeding 1 year would not ordinarily be self-liquidating as contemplated by the statute, unless at the time of issue provision is made for a redemption or sinking fund that will be sufficient to pay such obligations at maturity.

[Reg. A, 33 FR 17231, Nov. 21, 1968, as amended at 34 FR 1113, Jan. 24, 1969; 34 FR 6417, Apr. 12, 1969; 36 FR 8441, May 6, 1971; 37 FR 24105, Nov. 14, 1972; 43 FR 53709, Nov. 17, 1978; 58 FR 68515, Dec. 28, 1993]

§ 201.109 Eligibility for discount of mortgage company notes.

(a) The question has arisen whether notes issued by mortgage banking companies to finance their acquisition and temporary holding of real estate mortgages are eligible for discount by Reserve Banks.

(b) Under section 13 of the Federal Reserve Act the Board has authority to define what are "agricultural, industrial, or commercial purposes", which is the statutory criterion for determining the eligibility of notes and drafts for discount. However, such definition may not include paper "covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities".

(c) The legislative history of section 13 suggests that Congress intended to make eligible for discount "any paper drawn for a legitimate business purpose of any kind"⁴ and that the Board, in determining what paper is eligible, should place a "broad and adaptable construction"⁵ upon the terms in section 13. It may also be noted that Congress apparently considered paper

issued to carry investment securities as paper issued for a "commercial purpose", since it specifically prohibited the Board from making such paper eligible for discount. If "commercial" is broad enough to encompass investment banking, it would also seem to include mortgage banking.

(d) In providing for the discount of commercial paper by Reserve Banks, Congress obviously intended to facilitate the current financing of agriculture, industry, and commerce, as opposed to long-term investment.⁶ In the main, trading in stocks and bonds is investment-oriented; most securities transactions do not directly affect the production or distribution of goods and services. Mortgage banking, on the other hand, is essential to the construction industry and thus more closely related to industry and commerce. Although investment bankers also perform similar functions with respect to newly issued securities, Congress saw fit to deny eligibility to all paper issued to finance the carrying of securities. Congress did not distinguish between newly issued and outstanding securities, perhaps covering the larger area in order to make certain that the area of principal concern (i.e., trading in outstanding stocks and bonds) was fully included. Speculation was also a major Congressional concern, but speculation is not a material element in mortgage banking operations. Mortgage loans would not therefore seem to be within the purpose underlying the exclusions from eligibility in section 13.

(e) Section 201.3(a) provides that a negotiable note maturing in 90 days or less is not eligible for discount if the proceeds are used "for permanent or fixed investments of any kind, such as land, buildings or machinery, or for any other fixed capital purpose". However, the proceeds of a mortgage company's commercial paper are not used by it for any permanent or fixed capital purpose, but only to carry temporarily an inventory of mortgage loans pending their "packaging" for sale to

⁴House Report No. 69, 63d Cong., p. 48.

⁵50 Cong. Rec. 4675 (1913) (remarks of Rep. Phelan).

⁶50 Cong. Rec. 5021 (1913) (remarks of Rep. Thompson of Oklahoma); 50 Cong. Rec. 4731-32 (1913) (remarks of Rep. Borland).

§201.110

12 CFR Ch. II (1–1–02 Edition)

permanent investors that are usually recurrent customers.

(f) In view of the foregoing considerations the Board concluded that notes issued to finance such temporary “warehousing” of real estate mortgage loans are notes issued for an industrial or commercial purpose, that such mortgage loans do not constitute “investment securities”, as that term is used in section 13, and that the temporary holding of such mortgages in these circumstances is not a permanent investment by the mortgage banking company. Accordingly, the Board held that notes having not more than 90 days to run which are issued to finance the temporary holding of mortgage loans are eligible for discount by Reserve Banks.

[35 FR 527, Jan. 15, 1970, as amended at 58 FR 68515, Dec. 28, 1993]

§201.110 Goods held by persons employed by owner.

(a) The Board has been asked to review an Interpretation it issued in 1933 concerning the eligibility for rediscount by a Federal Reserve Bank of bankers’ acceptances issued against field warehouse receipts where the custodian of the goods is a present or former employee of the borrower. [¶ 1445 Published Interpretations, 1933 BULLETIN 188] The Board determined at that time that the acceptances were not eligible because such receipts do not comply with the requirement of section 13 of the Federal Reserve Act that a banker’s acceptance be “secured at the time of acceptance by a warehouse receipt or other such document *conveying or securing title* covering readily marketable staples,” nor with the requirement of section XI of the Board’s Regulation A that it be “secured at the time of acceptance by a warehouse, terminal, or other similar receipt, conveying security title to such staples, *issued by a party independent of the customer.*”

The requirement that the receipt be “issued by a party independent of the customer” was deleted from Regulation A in 1973, and thus the primary issue for the Board’s consideration is whether a field warehouse receipt is a document “securing title” to readily marketable staples.

(b) While bankers’ acceptances secured by field warehouse receipts are rarely offered for rediscount or as collateral for an advance, the issue of “eligibility” is still significant. If an ineligible acceptance is discounted and then sold by a member bank, the proceeds are deemed to be “deposits” under §204.1(f) of Regulation D and are subject to reserve requirements.

(c) In reviewing this matter, the Board has taken into consideration the changes that have occurred in commercial law and practice since 1933. Modern commercial law, embodied in the Uniform Commercial Code, refers to “perfecting security interests” rather than “securing title” to goods. The Board believes that if, under State law, the issuance of a field warehouse receipt provides the lender with a perfected security interest in the goods, the receipt should be regarded as a document “securing title” to goods for the purposes of section 13 of the Federal Reserve Act. It should be noted, however, that the mere existence of a perfected security interest alone is not sufficient; the Act requires that the acceptance be secured by a warehouse receipt or its equivalent.

(d) Under the U.C.C., evidence of an agreement between the secured party and the debtor must exist before a security interest can attach. [U.C.C. section 9–202.] This agreement may be evidence by: (1) A written security agreement signed by the debtor, or (2) the collateral being placed in the possession of the secured party or his agent [U.C.C. section 9–203]. Generally, a security interest is perfected by the filing of a financing statement, [U.C.C. section 9–302.] However, if the collateral is in the possession of a bailee, then perfection can be achieved by:

(1) Having warehouse receipts issued in the name of the secured party; (2) notifying the bailee of the secured party’s interest; or (3) having a financing statement filed. [U.C.C. section 9–304(3).]

(e) If the field warehousing operation is properly conducted, a security interest in the goods is perfected when a warehouse receipt is issued in the name of the secured party (the lending bank). Therefore, warehouse receipts issued pursuant to a bona fide field